

TAM:MAS:mel

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

CHARMAINE SMITH,	:	No. 3:CV-05-0788
Plaintiff	:	
	:	
v.	:	(Conaboy, J.)
	:	
DOCTOR WHITMIRE and	:	
CRYSTAL SHIVERY,	:	
Defendants	:	Filed Electronically

EXHIBIT IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
FOR SUMMARY JUDGMENT

Respectfully submitted,

THOMAS A. MARINO  
United States Attorney

s/ Melissa A. Swauger  
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Date: June 12, 2006



IN THE UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

Charmaine Smith,	)	
Plaintiff	)	Civil No. 3:CV-05-0788
	)	
v.	)	
	)	
R. Whitmire,	)	
Defendant	)	
	)	

DECLARATION OF L. CUNNINGHAM

1. I am presently employed by the Federal Bureau of Prisons as the Supervisory Attorney at the United States Penitentiary (USP) at Lewisburg, Pennsylvania. I am familiar with the above referenced civil action in which federal inmate Smith, Reg. No. 03324-016, complains on September 27, 2004, he suffered from severe chest pain, and requested permission to return to his housing unit get medication. The inmate claims his housing unit was locked and Correctional Officer defendant Shivery would not allow him to enter the unit. The inmate then claims he was sent to the hospital where defendant Whitmire refused to provide him with medication and told him "I don't care if you die". The inmate then claims he fell to the floor and was taken to Health Services in a wheelchair for his medication. The inmate claims he was placed in the Special Housing Unit a short time later.
2. The plaintiff in this case is federal inmate Charmaine Smith, Reg. No. 03324-016, is a District of Columbia Superior Court commitment. He was convicted in the D.C. Superior Court of several offenses, including Receiving Stolen Property and Possession of an Unregistered Firearm. He is currently serving a Parole Violator Term. He is projected for release September 13, 2009, via Presumptive Parole.
3. The Bureau of Prisons has a three-level administrative remedy process. This process is a method by which an inmate may seek formal review of a complaint related to any aspect of his imprisonment.
4. The Bureau of Prisons' procedure requires that an inmate first file his complaint at the institution with the Warden. If the inmate is dissatisfied with the Warden's response,

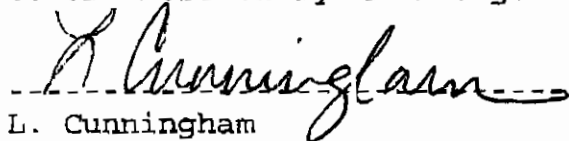
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USP Lewisburg Legal

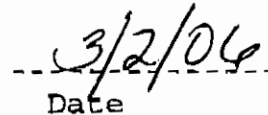
the inmate may appeal to the appropriate Regional Office. If dissatisfied with the Regional Office's response, the inmate may appeal to the Office of the General Counsel in Washington, D.C. The Bureau of Prisons Administrative Remedy Program requires an inmate wishing to appeal the decision of the Warden to file an appeal with the appropriate Regional Director within 20 calendar days of the Warden's response. If the inmate is not satisfied with the Regional Director's response, they may file an appeal with the General Counsel within 30 calendar days of the signed Regional Director's response. An appeal to General Counsel is considered the final administrative appeal in the Bureau of Prisons' Administrative Remedy Program.

5. On March 2, 2006, a search of the plaintiff's Administrative Remedy History was conducted in order to determine whether or not he had exhausted available administrative remedies regarding any the issues he raises in his complaint.
6. A review of the Bureau of Prisons' SENTRY system computerized indexes indicates that inmate Smith has not exhausted his available administrative remedies on any issue he raises in this complaint. Specifically, the plaintiff has failed to access the administrative remedy system at all. The accurate copy of the attached SENTRY page printout indicating "No remedy data exists for this inmate" means the inmate has not filed any requests for administrative remedy.

I hereby state under penalty of perjury pursuant to the provisions of 28 U.S.C. §1746 that the above is true and correct to the best of my knowledge.



L. Cunningham  
Supervisory Attorney  
United States Penitentiary  
Lewisburg, Pennsylvania

  
Date

G5152 NO REMEDY DATA EXISTS FOR THIS INMATE

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MIDDLE DISTRICT OF PENNSYLVANIA

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Plaintiff	:	
	:	
v.	:	(Conaboy, J.)
	:	
DOCTOR WHITMIRE and	:	
CRYSTAL SHIVERY,	:	
Defendants	:	

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on June 12, 2006, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

Addressee:

Charmaine Smith  
Reg. No. 03324-016  
U.S. Penitentiary  
P.O. Box 5500  
Adelanto, CA 92301-5155

s/ Michele E. Lincalis  
MICHELE E. LINCALIS  
Paralegal Specialist